

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC., et al.,

Plaintiffs,

v.

CHUN WONG, et al.,

Defendants.

CASE NO. C19-0990JLR

ORDER

**I. INTRODUCTION**

Before the court is Plaintiffs Amazon.com, Inc. and Nite Ize, Inc.’s (together, “Plaintiffs”) renewed motion for sanctions and entry of default against Defendant Chun Wong. (Mot. (Dkt. # 101); Reply (Dkt. # 105).) Plaintiffs ask the court to sanction Mr. Wong for his repeated failures to cooperate with discovery by entering default against Mr. Wong and awarding them the attorneys’ fees and costs they incurred in bringing this motion. (Mot. at 1.) Mr. Wong opposes the motion. (Resp. (Dkt. # 103).) The court has reviewed the motion, the relevant portions of the record, and the governing law. Being

1 fully advised,<sup>1</sup> the court GRANTS Plaintiffs' renewed motion for sanctions and entry of  
 2 default.

## 3 II. BACKGROUND

4 This action arises out of Mr. Wong's alleged operation of multiple Amazon selling  
 5 accounts through which he sold counterfeit Nite Ize STEELIE products. (*See* Am.  
 6 Compl. (Dkt. # 31) ¶¶ 36, 38.) Plaintiffs filed this action against Mr. Wong and about a  
 7 dozen other defendants—several of which Mr. Wong later admitted were pseudonyms he  
 8 used to create accounts on Amazon.com—on June 26, 2019. (*See* Compl. (Dkt. # 1);  
 9 Ans. (Dkt. # 41) ¶¶ 15-19 (admitting that Mr. Wong operated seller's accounts under the  
 10 names James Lee, Steve Max, Zack Grey, Jeffrey Hall, and Derek Wilson); Resp. at 10.)  
 11 Plaintiffs allege claims for trademark infringement, false designation of origin, breach of  
 12 contract, false advertising, and civil conspiracy. (Am. Compl. ¶¶ 78-113.) Mr. Wong is  
 13 the only Defendant who has appeared in this matter. (*See* Dkt.) The court has either  
 14 dismissed or entered default against all other Defendants. (*See* 6/4/21 Order of Default  
 15 (Dkt. # 38) (entering default against Zack Grey, Jeffrey Hall, Adam Jones, Jacky Likens,  
 16 Steve Max, Jacob Smith, Derek Wilson, and James Lee); 11/4/21 Order of Default (Dkt.  
 17 # 50) (entering default against Kevin Bao and Duan Bo Jiang); 8/24/22 Order (Dkt. # 81)  
 18 (dismissing Hu Nan Dong Limited without prejudice); 11/16/22 Order (Dkt. # 89)  
 19 (dismissing Shenzhen Haiming Limited and Does 1-10 without prejudice).)

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21 <sup>1</sup> Mr. Wong has requested oral argument (*see* Resp. at 1); Plaintiffs have not (*see* Mot. at  
 22 1). The court finds oral argument unnecessary to its disposition of the motion. *See* Local Rules  
 W.D. Wash. LCR 7(b)(4).

1 Plaintiffs served Mr. Wong with their first set of interrogatories and requests for  
2 production (“RFPs”) of documents on July 23, 2021. (*See* 1/31/22 Rainwater Decl. (Dkt.  
3 # 57) ¶ 2, Ex. A (first set of interrogatories and RFPs).) When Mr. Wong failed to timely  
4 respond to these discovery requests, the parties agreed that he would have until October  
5 1, 2021, to respond and that any objections he might have asserted would be deemed  
6 waived. (1/31/22 Rainwater Decl. ¶¶ 3-5.) Although Mr. Wong responded to Plaintiffs’  
7 interrogatories on October 1, 2021, he did not produce any documents and Plaintiffs  
8 found many of his responses insufficient. (*Id.* ¶ 6, Exs. D-E (Mr. Wong’s October 1,  
9 2021 responses to Plaintiffs’ first set of discovery requests).) Mr. Wong then agreed to  
10 provide supplemental responses to Plaintiffs’ discovery requests by October 19, 2021.  
11 (*Id.* ¶ 7; Powar Decl. (Dkt. # 58) ¶ 2.) He missed that deadline, however, and did not  
12 supplement his responses until December 16, 2021. (1/31/22 Rainwater Decl. ¶¶ 7-8,  
13 Exs. G-H (Mr. Wong’s supplemental RFP responses).) Even then, Mr. Wong provided  
14 only a few documents and did not supplement his interrogatory answers. (*See id.* ¶ 8.)

15 After the parties failed to resolve their differences through a further meet and  
16 confer session, they requested a discovery hearing, which the court held on January 19,  
17 2022. (*Id.* ¶ 9; 1/19/22 Min. Entry (Dkt. # 54).) During this hearing, counsel for Mr.  
18 Wong stated that potentially responsive documents and communications that had been  
19 stored in the WeChat messaging system were not available because Mr. Wong had lost  
20 his phone and could not access his account with his new phone. (1/31/22 Rainwater  
21 Decl. ¶ 10, Ex. I (“1/19/22 Hr’g Tr.”) at 7:5-24.) The court admonished counsel that it is  
22 not enough, when responding to discovery requests, “[s]imply to say that I lost the phone,

1 or I destroyed the phone, [or] I don't know what happened to the phone.” (*Id.* at  
2 8:11-14.) Rather, the court instructed Mr. Wong to “give a full explanation, as opposed  
3 to a conclusion” regarding the efforts he made to obtain the requested information. (*Id.* at  
4 12:2-8.) The court warned that failure to provide “satisfactory . . . , full, [and] complete”  
5 responses to Plaintiffs’ discovery requests could result in the court striking Mr. Wong’s  
6 answer and entering default judgment against him. (*Id.* at 12:9-13.) In addition, the court  
7 directed Plaintiffs to file a motion to compel. (1/19/22 Min. Entry; *see* Mot. to Compel  
8 (Dkt. # 56).)

9 In their motion to compel, Plaintiffs sought responses to 14 RFPs, which they  
10 divided into two broad categories of documents and communications relating to (1) Mr.  
11 Wong’s procurement and sale of Nite Ize products and (2) “accounting  
12 documents . . . and documents evidencing any transmittal of funds.” (*See* Mot. to  
13 Compel at 9-10.) Plaintiffs also asked the court to compel Mr. Wong to provide  
14 complete responses to 12 interrogatories, particularly those regarding the individuals with  
15 whom he communicated regarding Nite Ize products; the fictitious names and business  
16 entities he used to import or sell Nite Ize products; and Mr. Wong’s, sale, distribution, or  
17 importation of Nite Ize products, including related financial information. (*Id.* at 10-11.)  
18 In response, Mr. Wong asked the court to limit its order to “information concerning  
19 Amazon;” explained that he used WeChat almost exclusively for communications  
20 regarding his purchases and sales of products; described his unsuccessful efforts to obtain  
21 his WeChat messages; stated that he no longer had access to certain information after  
22 Amazon closed his selling accounts; and asserted that he was starting to receive

1 potentially responsive banking records. (*See* Mot. to Compel Resp. (Dkt. # 59) ¶¶ 4-6, 8;  
2 2/14/22 Wong Decl. (Dkt. # 60) ¶¶ 2-8 (explaining efforts to obtain documents).)

3       On March 7, 2022, the court granted Plaintiffs’ motion to compel and ordered Mr.  
4 Wong to provide complete responses to Plaintiffs’ RFPs and interrogatories by no later  
5 than April 6, 2022. (3/7/22 Order (Dkt. # 64) at 5-11, 13.) In relevant part, the court  
6 concluded with respect to Plaintiffs’ RFPs that Mr. Wong had provided “competent  
7 evidence that sufficiently explains his failure to produce WeChat messages from the  
8 relevant time period and that those messages cannot be reasonably recovered.” (*Id.* at 6;  
9 *see also* 2/14/22 Wong Decl. ¶¶ 2-5 (explaining the efforts Mr. Wong made to try to  
10 recover his WeChat messages).) However, the court ordered Mr. Wong to provide  
11 complete responses to Plaintiffs’ requests for financial records and other documents  
12 related to his procurement and sale of counterfeit Nite Ize products. (*Id.* at 8-9.) The  
13 court instructed that if “requested documents cannot be produced because they would  
14 have been contained within the lost WeChat message files, [Mr. Wong] must carefully  
15 explain that and must identify the particular document or kind of document affected.”  
16 (*Id.*) With respect to the interrogatories, the court concluded that Mr. Wong’s answers  
17 were “cursory and evasive” and “incomplete,” and that Mr. Wong’s inability to access  
18 underlying documents did not justify his failure to provide narrative answers to Plaintiffs’  
19 queries. (*Id.* at 10-11.) The court ordered Mr. Wong to respond in full to the RFPs and  
20 interrogatories by no later than April 6, 2022. (*Id.* at 13.) The court also granted  
21 Plaintiffs’ request for attorneys’ fees and costs pursuant to Federal Rule of Civil  
22 Procedure 37(a)(5)(A) after finding that Mr. Wong’s failure to respond to Plaintiffs’

1 discovery requests “was not substantially justified and resulted in unnecessary motion  
2 practice.” (*Id.* at 11-12; *see also* 4/12/22 Order (Dkt. # 71) (granting Plaintiffs’ request  
3 for \$12,000 in attorneys’ fees).)

4 In April 2022, Mr. Wong’s former attorneys moved to withdraw, citing Mr.  
5 Wong’s failure to communicate with them and to cooperate with their efforts to comply  
6 with the court’s March 7, 2022 order. (*See* Mot. to Withdraw (Dkt. # 69); Renewed Mot.  
7 to Withdraw (Dkt. # 73).) Counsel listed 51 dates on which they had reached out to Mr.  
8 Wong over email and by telephone regarding the production of documents and  
9 information responsive to Plaintiffs’ discovery requests. (Rosenbaum Decl. (Dkt. # 74)  
10 ¶¶ 3-8.) These efforts included at least eight unsuccessful contacts with Mr. Wong after  
11 the court issued its March 7, 2022 order, including an attempt to obtain information to  
12 oppose Plaintiffs’ motion for attorneys’ fees and costs. (*Id.* ¶¶ 6-8.) Despite counsel’s  
13 efforts, Mr. Wong did not produce any additional information. (Renewed Mot. to  
14 Withdraw at 2.) The court granted counsel’s motion to withdraw and Mr. Wong  
15 proceeded *pro se*. (*See* 5/10/22 Order (Dkt. # 76).)

16 Plaintiffs assert that they contacted Mr. Wong seven times after counsel withdrew  
17 regarding his efforts to obtain new counsel and to schedule his deposition. (3/2/23  
18 Rainwater Decl. (Dkt. # 93) ¶ 2.) Although Mr. Wong stated in a May 20, 2022 email  
19 that he would contact his shipper about documents, he never produced any such  
20 documents. (*Id.*)

21 Mr. Wong’s current attorney filed a notice of appearance on September 12, 2022.  
22 (Notice (Dkt. # 82).) On September 13, 2022, counsel for the parties met and conferred

1 regarding the outstanding discovery and Mr. Wong’s deposition. (3/2/23 Rainwater Decl.  
2 ¶ 3; *id.*, Ex. B (email memorializing the meet and confer session).) On September 14,  
3 2022, Mr. Wong produced two bank records and a description of the shopping center  
4 where he sourced his counterfeit Nite Ize goods. (*Id.* ¶ 4; *id.*, Ex. D (email and  
5 attachments).)

6 Mr. Wong sat for his deposition on September 21, 2022. (*Id.* ¶ 5.) The parties  
7 agreed to leave the deposition open for a second day because Mr. Wong had failed to  
8 produce responsive documents in advance of the deposition, because Mr. Wong’s  
9 attorney was presenting a CLE during the middle of the scheduled deposition day, and  
10 because “the presence of a translator necessitated more time.” (3/2/23 Rainwater Decl.  
11 ¶ 5.) Mr. Wong subsequently produced tax returns for 2020 and 2021 and photos of  
12 non-Nite Ize products he had stored in his basement. (*Id.* ¶ 6.)

13 Subsequently, Plaintiffs reached out to Mr. Wong’s attorney several times  
14 regarding Mr. Wong’s availability for the second day of his deposition. (*Id.* ¶¶ 7-10.)  
15 After receiving no response to their inquiries, Plaintiffs noted Mr. Wong’s deposition for  
16 November 2, 2022—the last day of discovery. (*Id.* ¶¶ 10-11; *see* 3/11/22 Sched. Order  
17 (Dkt. # 66).) In addition, on September 27, 2022, they served a second set of discovery  
18 requests on Mr. Wong. (3/2/23 Rainwater Decl. ¶ 8.) Mr. Wong did not respond to those  
19 requests or request an extension of the deadline to respond. (*Id.* ¶¶ 8, 14.)

20 On November 1, 2022, Plaintiffs reached out to Mr. Wong’s attorney to request a  
21 meet and confer conference and to confirm that Mr. Wong would attend the second day  
22 of his deposition. (*Id.* ¶ 11.) In response, Mr. Wong’s attorney told Plaintiffs that he

1 “anticipate[d] the filing of a bankruptcy petition” and did “not expect [Mr. Wong] to  
 2 attend [the November 2, 2022] deposition or engage with you any further.” (*Id.*; *see id.*,  
 3 Ex. K, at 102-03<sup>2</sup> (email from Mr. Wong’s attorney).) Mr. Wong filed his bankruptcy  
 4 petition that same day. *See* Chapter 7 Voluntary Petition, *In re Wong*, No.  
 5 22-11767TWD (Bankr. W.D. Wash. Nov. 1, 2022), Dkt. # 1; (*see also* Def.’s 11/3/22  
 6 Rep. (Dkt. # 85) (explaining the circumstances leading up to the bankruptcy filing)). As  
 7 a result, the court stayed this case pending the resolution of Mr. Wong’s bankruptcy  
 8 proceeding. (11/16/22 Ord. (Dkt. # 89) (citing 11 U.S.C. § 362(a)(1)).)

9 On February 16, 2023, the bankruptcy court dismissed Mr. Wong’s case because  
 10 he failed to appear for his Section 341 Meeting of Creditors. (*See* 2/17/23 JSR (Dkt.  
 11 # 90) ¶ 3 (citing Ex Parte Order Dismissing Case for Failure to Appear at Meeting of  
 12 Creditors, *In re Wong*, No. 22-11767TWD (Bankr. W.D. Wash. Feb. 16, 2023), Dkt.  
 13 # 35).) The court lifted the stay in this case on February 17, 2023, pursuant to 11 U.S.C.  
 14 § 362(C)(2)(B). (2/17/23 Ord. (Dkt. # 91).)

15 Plaintiffs filed their first motion for sanctions and entry of default against Mr.  
 16 Wong on March 2, 2023. (1st. Default Mot. (Dkt. # 92).) On March 6, 2023, the court  
 17 ordered Mr. Wong to (1) fully comply with the court’s March 7, 2022 order granting  
 18 Plaintiffs’ motion to compel by no later than March 21, 2023; (2) respond to Plaintiffs’  
 19 second set of discovery requests by no later than March 21, 2023; and (3) sit for the  
 20 second day of his deposition by no later than March 31, 2023. (3/6/23 Order (Dkt. # 95)

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21  
 22 <sup>2</sup> The court refers to the page numbers in the CM/ECF header when citing the exhibits to  
 the March 2, 2023 Rainwater declaration.



¶¶ 1-3.) The court also granted Plaintiffs leave to renew their motion for sanctions and entry of default if Mr. Wong did not comply with the order. (*Id.* ¶ 4.) Finally, the court warned Mr. Wong “that failure to comply with his discovery obligation and [the March 6, 2023] order may result in the imposition of sanctions, up to and including entry of default in Plaintiffs’ favor.” (*Id.* ¶ 5.)

On March 8, 2023, Plaintiffs emailed Mr. Wong’s attorney to request Mr. Wong’s availability for the second day of his deposition, specific documents still outstanding from Plaintiffs’ requests, and a declaration from Mr. Wong “outlining the efforts he has taken to obtain the documents and information or an explanation of why no documents or information exist.” (6/15/23 Rainwater Decl. (Dkt. # 102) ¶ 2; *id.*, Ex. A (email from Plaintiffs’ attorney, listing the specific documents requested).) Mr. Wong produced some supplemental documents and interrogatory responses on March 20, 2023, but still did not produce any emails, documents related to his procurement and sale of counterfeit Nite Ize products, documents that he had promised to produce during the first day of his deposition, or information about his efforts to obtain any missing documents. (*Id.* ¶¶ 3-4; *id.*, Ex. B (supplemental responses).) To the contrary, he simply asserted that he did not have access to his account on Shipito, the company he used to import the counterfeit Nite Ize products; that all of his communications about Nite Ize products were made through WeChat; that he had deleted all his email messages in 2020 before he was aware of this lawsuit; and that he did not have access to his Amazon selling accounts. (*Id.*, Ex. B; *id.* ¶ 5, Ex. C (email from Mr. Wong’s attorney to Plaintiffs’ attorney); *see also* 6/26/23 Wong Decl. ¶ 5 (stating that he deleted the email messages because he was otherwise

1 going to have to pay for additional storage).) On March 23, 2023, Plaintiffs emailed Mr.  
2 Wong's attorney a list of specific deficiencies with Mr. Wong's supplemental production.  
3 (6/15/23 Rainwater Decl. ¶ 5, Ex. C (March 23, 2023 email correspondence between Mr.  
4 Wong's attorney and Plaintiffs' attorney).) In response, Mr. Wong's attorney asserted  
5 that the documents either did not exist or were not accessible. (*Id.*)

6 Mr. Wong sat for the second day of his deposition on March 31, 2023. (*See*  
7 3/31/23 Wong Dep. at 1.<sup>3</sup>) During that deposition, he admitted that he had not made any  
8 efforts to contact Shipito for assistance in accessing his account, had not contacted his  
9 freight forwarder or shipping company, and had not attempted to contact any of his  
10 WeChat connections about this case. (*Id.* at 61:13-15, 31:11-32:12, 33:17-25.) He  
11 repeatedly stated that he did not know or remember what he did with respect to procuring  
12 products or searching for responsive documents. (*Id.* at 17:12-20, 21:22-25, 36:23-37:1,  
13 45:3-13, 67:4-8.) He also asserted that the only way he could identify his freight  
14 forwarder, shipping company, factory, and supplier would be to return to China and look  
15 for them. (*Id.* at 34:1-19, 63:4-25.) Although he returned to live in Guangzhou, China on  
16 April 25, 2023 (6/26/23 Wong Decl. ¶ 13), he has not yet provided that information to  
17 Plaintiffs (*see* Reply at 2).

18 Plaintiffs now renew their motion for sanctions and entry of default. They  
19 characterize their discovery requests as seeking "information, communications, and  
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21 <sup>3</sup> Plaintiffs have submitted two sets of excerpts of the transcript of Mr. Wong's March 31,  
22 2023 deposition. (6/15/23 Rainwater Decl. ¶ 6, Ex. D; 6/30/23 Rainwater Decl. (Dkt. # 106) ¶ 3,  
Ex. B.) For ease of reference, the court cites directly to the relevant page and line numbers of the  
deposition transcript rather than to the exhibits.

documents related to [Mr.] Wong’s procurement and sale of counterfeit Nite Ize products, all of which would allow Plaintiffs to ascertain the extent of [Mr.] Wong’s involvement in Defendants’ pervasive counterfeiting scheme, and the identities of other bad actors and conspirators.” (Mot. at 1.) They assert that Mr. Wong still has not provided the documents and information the court compelled him to produce in its March 7, 2022 and March 6, 2023 orders. (*Id.*; see 6/15/23 Rainwater Decl. ¶ 7 (listing the outstanding documents).) In response, Mr. Wong asserts that sanctions are unwarranted because he produced documents to the best of his ability; did not keep records; and cannot access his WeChat, email, Amazon, and Shipito accounts to retrieve documents or communications that may have been stored in those systems. (Resp. at 1-2, 5-6; 6/26/23 Wong Decl. ¶¶ 2-7.)

### III. ANALYSIS

The Federal Rules of Civil Procedure authorize the court to impose sanctions against a party who fails to “to obey an order to provide or permit discovery.” Fed. R. Civ. P. 37(b)(2)(A). Such sanctions may include “prohibiting the disobedient party from supporting or opposing designated claims or defenses,” “striking pleadings in whole or in part,” or “rendering a default judgment against the disobedient party.” Fed. R. Civ. P. 37(b)(2)(A)(ii), (iii), (vi). “By the very nature of its language, sanctions imposed under Rule 37 must be left to the sound discretion of the trial judge.” *O’Connell v.*

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1 *Fernandez-Pol*, 542 F. App'x 546, 547-48 (9th Cir. 2013) (citing *Craig v. Far W. Eng'g*  
 2 *Co.*, 265 F.2d 251, 260 (9th Cir. 1959)).<sup>4</sup>

3 To justify case-dispositive sanctions under Rule 37(b)(2), the court must find that  
 4 the discovery violations were due to the “willfulness, bad faith, or fault of the party.” *Bd.*  
 5 *of Tr. of Wash. Meat Indus. Pension Tr. v. Hammond Food*, No. C13-0474JLR, 2014 WL  
 6 2000351, at \*1 (W.D. Wash. May 15, 2014) (quoting *Commodity Futures Trading*  
 7 *Comm’n v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 770–71 (9th Cir. 1995)). If the court  
 8 finds willful conduct, it then considers five factors to determine whether case-dispositive  
 9 sanctions are appropriate: “(1) the public’s interest in expeditious resolution of litigation;  
 10 (2) the court’s need to manage its dockets; (3) the risk of prejudice to the party seeking  
 11 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the  
 12 availability of less drastic sanctions.” *Id.* at \*2 (quoting *Conn. Gen. Life Ins. Co. v. New*  
 13 *Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007)).

14 For the reasons set forth below, the court concludes that the sanction of entry of  
 15 default in Plaintiffs’ favor is warranted.

#### 16 **A. Mr. Wong Violated the Court’s Discovery Orders**

17 First, the court concludes that Mr. Wong violated the discovery orders it issued on  
 18 March 7, 2022 and March 6, 2023. (*See* 3/7/22 Order; 3/6/23 Order.) Mr. Wong does  
 19 not appear to dispute that he violated these orders. (*See, e.g.*, Resp. at 1 (acknowledging  
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21 <sup>4</sup> District courts also have “inherent power to control their dockets” and may “impose  
 22 sanctions including, where appropriate, default or dismissal.” *Thompson v. Housing Auth. of*  
*City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986) (per curiam).

1 that his “compliance with these orders may not have been adequate at the time”).) In its  
2 March 7, 2022 order, the court compelled Mr. Wong to respond to specific RFPs and  
3 interrogatories by no later than April 6, 2022. (3/7/22 Order at 13.) Mr. Wong, however,  
4 did not supplement his responses before that deadline. (See Renewed Mot. to Withdraw  
5 at 2 (stating that Mr. Wong had not provided any additional information to his former  
6 counsel as of April 27, 2022).) Indeed, Mr. Wong’s former attorneys withdrew from this  
7 case because Mr. Wong did not cooperate with their efforts to comply with the March 7,  
8 2022 order. (See *id.*; Rosenbaum Decl. ¶¶ 6-8 (detailing counsel’s efforts to work with  
9 Mr. Wong after the court issued that order).) Mr. Wong also did not supplement his  
10 production while he was proceeding *pro se*. (See 3/2/23 Rainwater Decl. ¶ 2.) As a  
11 result, it was not until mid-September 2022—six months after the court issued its order  
12 granting Plaintiffs’ motion to compel—that Mr. Wong produced any additional  
13 documents (*see id.* ¶ 4); and it was not until March 20, 2023 that Mr. Wong provided  
14 supplemental responses to Plaintiffs’ first set of interrogatories (*see* 6/15/23 Rainwater  
15 Decl. ¶ 4). The court has little trouble concluding that Mr. Wong violated the March 7,  
16 2022 order.

17 Mr. Wong also violated the court’s March 6, 2023 order. In that order, the court  
18 directed Mr. Wong to “fully comply” with its March 7, 2022 order granting Plaintiffs’  
19 motion to compel by no later than March 21, 2023. (3/6/23 Order at 2.) Although Mr.  
20 Wong states that documents responsive to Plaintiffs’ first set of discovery requests are  
21 not available because he cannot access his email, Shipito, and Amazon accounts (*see*  
22 Resp. at 1-2, 5-6), he has made no effort to comply with the court’s instructions to

“carefully explain” why the requested documents cannot be produced, “identify the particular document or kind of document affected,” and support his assertions with “competent evidence” (3/7/22 Order at 9; *id.* at 7 (quoting *Doe v. Trump*, 329 F.R.D. 262, 270-71 (W.D. Wash. 2018)); *see* 6/26/23 Wong Decl. ¶¶ 3-7 (stating he made “extensive efforts” to comply without explaining what those efforts were)). In addition, the court directed Mr. Wong to respond to Plaintiffs’ second set of discovery requests, which Plaintiffs had served on September 28, 2022, by no later than March 21, 2023. (3/7/22 Order at 2.) The court has found nothing in the record that shows that Mr. Wong provided answers and responses to these interrogatories and RFPs before this deadline. (*See generally* Resp.; 6/26/23 Wong Decl.) As a result, the court concludes that Mr. Wong violated both of its discovery orders.

#### **B. Mr. Wong’s Violations of the Court’s Orders Were Willful**

Having concluded that Mr. Wong violated the discovery orders, the court must determine whether Mr. Wong’s violations of those orders were willful. “Disobedient conduct not outside the control of the litigant is all that is required to demonstrate willfulness, bad faith or fault.” *Hammond Food*, 2014 WL 2000351, at \*1 (citing *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948-49 (9th Cir. 1993)). Mr. Wong’s sole response to Plaintiffs’ argument that his violations of the court’s discovery orders were willful is, “Well, that is their opinion.” (Resp. at 1.) The court disagrees. There is nothing in the record to indicate that circumstances beyond Mr. Wong’s control prevented him from cooperating with his former attorneys in complying with the court’s March 7, 2022 order. (*See generally* Resp.; 6/26/23 Wong Decl.) Mr. Wong was aware of the court’s

1 admonition to “give a full explanation, as opposed to a conclusion” regarding the efforts  
2 he made to obtain requested information that he was unable to produce and that failure to  
3 cooperate with discovery could result in entry of default. (1/19/22 Hr’g Tr. at 12:2-8;  
4 2/14/22 Wong Decl. ¶ 9 (stating that Mr. Wong “reviewed the transcript of this [c]ourt’s  
5 January 19th hearing . . . and [is] absolutely heeding the [c]ourt’s admonishments and  
6 making all efforts to get the necessary information”).) Despite representing to the court  
7 that he would comply with the court’s instructions (*see* 2/14/22 Wong Decl. ¶ 9), he has  
8 not explained the efforts, if any, that he has made to locate and produce responsive  
9 documents, nor has he identified any reasons outside of his control for his failure to obey  
10 the court’s orders (*see* 6/26/23 Wong Decl.). Accordingly, the court concludes that Mr.  
11 Wong’s violations of the court’s March 7, 2022 and March 6, 2023 orders were willful.

### 12 **C. Case-Dispositive Sanctions are Warranted**

13 Having found that Mr. Wong willfully violated the discovery orders, the court  
14 must now consider the five-factor test for determining whether case-dispositive sanctions  
15 are warranted.

16 Where a court order is violated, the first two factors [the public’s interest in  
17 expeditious resolution of litigation and the court’s need to manage its docket]  
18 support sanctions and the fourth factor [the public policy favoring disposition  
19 of cases on their merits] cuts against a default. Therefore, it is the third and  
20 fifth factors [the risk of prejudice to the party seeking sanctions and the  
21 availability of less drastic sanctions] that are decisive.

22 *Hammond Food*, 2014 WL 2000351, at \*2 (quoting *Adriana Int’l Corp. v. Thoeren*, 913  
F.2d 1406, 1412 (9th Cir. 1990) (insertions added in *Hammond Food*)). The court  
concludes that the third and fifth factors favor entry of default.

1 “A defendant suffers prejudice if the plaintiff’s actions impair the defendant’s  
2 ability to go to trial or threaten to interfere with the rightful decision of the case.”  
3 *Adriana Int’l*, 913 F.2d at 1412 (citing *Malone v. United States Postal Serv.*, 833 F.2d  
4 128, 131 (9th Cir. 1987)). Although delay alone is insufficient prejudice to warrant  
5 case-dispositive sanctions, courts find that the failure to produce documents as ordered is  
6 considered sufficient prejudice. *Id.*; see also *Fair Housing of Marin v. Combs*, 285 F.3d  
7 899, 906 (9th Cir. 2002) (finding prejudice justifying case-dispositive sanctions where  
8 the defendant’s failure to produce documents and misrepresentation that documents did  
9 not exist “deprived [the plaintiff] of any meaningful opportunity to follow up” on  
10 information or incorporate it in its litigation strategy). Here, as Plaintiffs point out, Mr.  
11 Wong’s failure to cooperate with discovery, at minimum, prevented them from obtaining  
12 information about and serving other Defendants whom they allege were involved in the  
13 scheme to manufacture and sell counterfeit Nite Ize products. (*See* Mot. at 8.) Therefore,  
14 court concludes that Mr. Wong’s conduct resulted in prejudice to Plaintiffs.

15 “The fifth factor—the availability of less drastic sanctions—has three subparts:  
16 ‘whether the court has considered lesser sanctions, whether it tried them, and whether it  
17 warned the recalcitrant party about the possibility of case-dispositive sanctions.’”  
18 *Hammond Food*, 2014 WL 2000351, at \*3 (quoting *Conn. Gen. Life Ins. Co.*, 482 F.3d at  
19 1096). Here, the court considered and tried lesser sanctions when it ordered Mr. Wong to  
20 pay Plaintiffs \$12,000 in attorney’s fees and costs pursuant to Federal Rule of Civil  
21 Procedure 37(a)(5). (*See* 3/7/22 Order at 11-12 (finding Mr. Wong’s failure to  
22 adequately respond to Plaintiffs’ first set of discovery requests was not substantially



1 justified and resulted in unnecessary motions practice); 4/12/22 Order.) After the court  
2 imposed this sanction, Mr. Wong willfully violated the court's March 7, 2022 and March  
3 6, 2023 discovery orders. The court has repeatedly warned Mr. Wong that failure to  
4 cooperate with discovery and to obey the court's orders could result in entry of default in  
5 Plaintiffs' favor. (*See* 1/19/22 Hr'g Tr. at 12:9-13; 3/6/23 Order at 2.) In addition, the  
6 clerk's entry of default against Mr. Wong's co-defendants should have put Mr. Wong on  
7 notice of the consequences of the failure to meet court deadlines. *See Hammond Foods*,  
8 2014 WL 2000351, at \*3 (noting that the defendant should have been on notice based on  
9 the court's entry of default judgment against a co-defendant for failing to file a  
10 responsive pleading). Accordingly, the court concludes that lesser sanctions have been  
11 and will continue to be unsuccessful at motivating Mr. Wong to comply with the court's  
12 orders and to cooperate with discovery. Because four out of the five factors support the  
13 issuance of case-dispositive sanctions, the court GRANTS Plaintiffs' motion for  
14 sanctions and entry of default.

15 **D. Request for Attorney's Fees and Costs**

16 Finally, Plaintiffs ask the court to order Mr. Wong to pay the fees and costs they  
17 incurred in bringing this motion. (Mot. at 9-10; Reply at 1.) Where a party fails to  
18 comply with a discovery order,

19 the court must order the disobedient party, the attorney advising that party,  
20 or both to pay the reasonable expenses, including attorney's fees, caused by  
21 the failure, unless the failure was substantially justified or other  
22 circumstances make an award of expenses unjust.

1 Fed. R. Civ. P. 37(b)(2)(C). In response, Mr. Wong states that he “cannot pay a fine,”  
2 but does not present evidence to support that assertion. (Resp. at 1; *see also id.* at 3  
3 (stating, without supporting evidence, that Mr. Wong has “more than \$150,000 in  
4 unsecured credit card debt in Canada” and cannot work safely at a construction site); *id.*  
5 at 6 (stating, again without supporting evidence, that Mr. Wong is “totally insolvent”);  
6 6/26/23 Wong Decl. ¶ 12 (stating he cannot afford to pay the sanctions that were already  
7 imposed on him).)

8 In light of Mr. Wong’s willful violation of the court’s discovery orders, and in the  
9 absence of “substantial justification” for those violations or evidence of circumstances  
10 that would make an award unjust, the court preliminarily GRANTS Plaintiffs’ motion for  
11 an award of the reasonable attorneys’ fees and costs they incurred in bringing this motion  
12 for sanctions. Plaintiffs may file a motion for attorneys’ fees and costs by no later than  
13 July 27, 2023. The motion shall be noted in accordance with Local Rules W.D. Wash.  
14 LCR 7(d)(3).

#### 15 IV. CONCLUSION

16 For the foregoing reasons, the court GRANTS Plaintiffs’ motion for sanctions and  
17 entry of default (Dkt. # 101). The Clerk is DIRECTED to enter default against Mr.  
18 Wong in Plaintiffs’ favor. Plaintiffs may file a motion for reasonable attorney’s fees and  
19 costs incurred in bringing this motion for sanctions and entry of default by no later than

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1 **July 27, 2023.** Mr. Wong's cross-motion for summary judgment (Dkt. # 103) is  
2 DENIED as moot.

3 Dated this 9th day of July, 2023.

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6 JAMES L. ROBART  
7 United States District Judge  
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